

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Petitions of Electric Mirror, LLC and Kohler Co.	)	ET Dkt. Nos. 07-61 and 07-62
	)	
For Temporary Waiver of Section 15.117 of the Commission's Rules	)	
	)	
To: Chief, Office of Engineering and Technology		

**COMMENTS AND CONSOLIDATED OPPOSITION**

The Association for Maximum Service Television, Inc. ("MSTV")<sup>1</sup> and the National Association of Broadcasters ("NAB")<sup>2</sup> submit these Comments and Consolidated Opposition to the petitions seeking waiver of Section 15.177 of the Commission's rules<sup>3</sup> (the "DTV tuner mandate") filed by Kohler Co.<sup>4</sup> and Electric Mirror, LLC.<sup>5</sup> The Commission should not waive its DTV tuner mandate to allow the sale of analog-only televisions built into bathroom and vanity mirrors. These waivers would harm the viewers buying the television receivers and undermine the federally mandated digital transition. Neither petition satisfies the FCC's waiver standard, and the petitions for waiver should therefore be denied.

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<sup>1</sup> MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality of the local broadcast system.

<sup>2</sup> NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission, the Courts, and other federal agencies.

<sup>3</sup> 47 C.F.R. § 15.177.

<sup>4</sup> See Request for Temporary Waiver of Section 15.777 of the Commission's Rules, ET Dkt. No. 07-61 (March 29, 2007) ("Kohler Petition").

<sup>5</sup> See Petition for Waiver of Electric Mirror, LLC, ET Dkt. No. 07-62 (March 29, 2007) ("Electric Mirror Petition").

**I. THE WAIVERS WOULD HARM CONSUMERS AND WOULD BE CONTRARY TO THE GOAL OF ADVANCING THE DIGITAL TRANSITION.**

The purpose of the March 1, 2007 DTV tuner mandate is two-fold: first, it advances the DTV transition by furthering the availability of DTV receivers, and second, it protects consumers by ensuring that they are able to receive free, over-the-air television service after the cut-off of analog television.<sup>6</sup> The temporary waivers sought by Kohler and Electric Mirror would defeat both of these purposes.

Grant of either or both of these waivers would cause undue harm to consumers because they would be purchasing televisions that will be obsolete after the Congressionally mandated “hard date” of February 17, 2009.<sup>7</sup> The manufacture and sale of such analog-only televisions will deprive viewers of the ability to receive local broadcasters’ free, over-the-air television signals (including vital news, information, and emergency alerts).<sup>8</sup> Consumers rightfully expect television sets that are able to receive all broadcast signals; indeed, this expectation was one of the reasons behind the creation of the DTV tuner mandate.<sup>9</sup> This expectation is no less salient for television receivers with screen sizes less than 13 inches.<sup>10</sup>

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<sup>6</sup> *Requirements for Digital Television Receiving Capability*, Second Report and Order, ET Dkt. No. 05-24, 20 FCC Rcd 18,607, at ¶ 3 (2005) (“*Second Report and Order*”).

<sup>7</sup> The Commission has determined that “consumers will receive only limited benefits from purchasing new analog-only sets that will not receive broadcast signals when analog service ceases.” *See id.* at ¶ 18.

<sup>8</sup> The Kohler Petition claims that because its television is operated by A/C line-voltage, it “cannot be used in an emergency situation.” Emergency information and alerts would still be available over the air, however, in emergencies not involving a power disruption.

<sup>9</sup> *See Requirements for Digital Television Receiving Capability*, Joint Comments of MSTV and NAB, WT Dkt. No. 05-24, at 8-9 (April 18, 2005).

<sup>10</sup> *See Second Report and Order* at ¶ 25.

The waivers sought by Kohler and Electronic Mirror would also hinder the transition to digital television. Contrary to the goal of increasing the availability of DTV receivers, Kohler and Electronic Mirror would sell analog-only television receivers. Every sale would increase the number of analog-only television receivers requiring digital-to-analog converter boxes.<sup>11</sup> MSTV and NAB agree with the Commission's statement that "it is essential that DTV reception capability be provided to consumers in new TV receivers as rapidly as possible in order to promote an expeditious completion of the transition from analog to digital broadcast television service."<sup>12</sup> This consideration is particularly important now that the deadline for the transition to digital television is looming.

## **II. THERE IS NO BASIS FOR GRANTING THE WAIVERS.**

"An applicant for waiver faces a high hurdle, even at the starting gate,"<sup>13</sup> and the petitioners have fallen far short of meeting that hurdle. First, grant of the waiver requests would frustrate – not further – the underlying purposes of the Section 15.117. As explained above, waivers would harm consumers and would hinder the digital transition. Grant of the waivers

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<sup>11</sup> The funds allocated to the converter box program may already be insufficient to fund coupons for the over-the-air televisions already in households. *See* Statement of James K. Yager on behalf of NAB and MSTV, before the House Committee on Energy and Commerce, at 13 (March 28, 2007). Additional analog-only television receivers would place even more strain on the coupon program. The Opposition of Norman R. Coltri, ET Dkt. No. 07-61 (April 2, 2007) also observes that it is unclear whether there is a means to attach a converter box. If the televisions cannot receive digital signals even with a converter box, they should not be sold to consumers.

<sup>12</sup> *See Second Report and Order* at ¶ 2. *See also id.* at ¶ 6 (noting that "consumers must be able to receive digital TV signals for the transition to move forward to a successful completion").

<sup>13</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

thus would lead to precisely the opposite result of the two goals articulated by the Commission for the DTV tuner mandate.<sup>14</sup>

Second, the petitioners have not shown “unique circumstances” such that deviation from the rule would serve the public interest.<sup>15</sup> The Commission fully considered the supply chain issues cited by the petitioners when it crafted the DTV tuner mandate. After weighing the matter in the *Second Report and Order*, the Commission concluded that the consumer electronics industry would be able to bring all receivers into compliance with the March 1, 2007 deadline.<sup>16</sup> It has been nearly a year and a half since the Commission issued the *Second Report and Order* – more than enough time to design and manufacture compliant televisions if a serious effort was made. Petitioners’ desire to sell bathroom and vanity mirrors with built-in television receivers does not create a special circumstance warranting temporary waiver of the DTV tuner mandate.

Electric Mirror’s reliance on the narrow waivers granted for the health care facility television receivers is misplaced. The television receivers in those cases required careful, specialized design in order to avoid the risk of electric shock to patients undergoing intravenous treatments.<sup>17</sup> The Commission highlighted “the process for meeting the safety requirements for equipment used in medical facilities” when explaining why it was granting the temporary

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<sup>14</sup> See *Second Report and Order* at ¶ 3.

<sup>15</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>16</sup> See *Second Report and Order* at ¶ 25.

<sup>17</sup> See *Petition of Sumitomo Canada Ltd.*, Order, ET Dkt. No. 06-198, 22 FCC Rcd 122, at ¶ 2 (rel. Jan. 5, 2007) (“*Sumitomo Order*”); See also *Requirements for Digital Television Receiving Capability*, Order, ET Dkt. No. 05-24, 21 FCC Rcd 9478, at ¶ 4 (rel. Aug. 17, 2006) (“*PDI Order*”).

waivers.<sup>18</sup> Neither Electric Mirror nor Kohler is constrained by these unique circumstances facing suppliers of specialized television healthcare video systems.<sup>19</sup>

Moreover, the effect of a waiver on viewers would be different in the case of mirror televisions. With its customer base of hospitals, dialysis clinics, and nursing homes, Sumitomo was able to show that strict application of the DTV tuner deadline would “affect the quality of the healthcare experience for many patients.”<sup>20</sup> Petitioners can make no such claim: their television receivers are designed for viewing in private homes and in hotels. Hotels and their guests expecting “state-of-the-art amenities” such as mirror televisions<sup>21</sup> are not akin to health care facilities and patients using specialized, anti-shock televisions for patient information and communications in addition to video programming.<sup>22</sup>

Moreover, viewers can hardly rely on Kohler’s built-in television since it is not even on the market yet.<sup>23</sup> The Commission has already decided that manufacturers should *withdraw* products from the market rather than continue to sell them after the March 1, 2007 deadline without DTV reception capability: “it would be preferable to restrict the marketing of

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<sup>18</sup> See *PDI Order* at ¶ 10 (further noting that the waiver was only for the “limited case” of selling “receivers used as part of a system intended for use in health care facilities”).

<sup>19</sup> Electric Mirror’s observation that its units are not portable or battery powered is a *non sequitur*. See Electric Mirror Petition at 5. The Commission noted in the *Second Report and Order* that television receivers with screen sizes less than 13 inches should be subject to the DTV tuner mandate because they are often used to receive emergency information and alerts. While portability and alternative power supply represented reasons for broadening the DTV tuner mandate to small-screen televisions, their absence would not justify a waiver. This is particularly true for the Electric Mirror televisions, which, as noted in the Declaration of James Mischel at ¶ 3, generally have screen sizes greater than 13 inches.

<sup>20</sup> See *Sumitomo Order* at ¶ 3.

<sup>21</sup> Electric Mirror Petition at 4.

<sup>22</sup> See Petition for Waiver, Sumitomo Canada Ltd., ET Dkt. No. 06-198, at 3-4 (Sept. 8, 2006).

<sup>23</sup> See Kohler Petition.

products than to continue to allow non-compliant products to be sold to consumers.”<sup>24</sup> There can be no doubt that this rule precludes new non-compliant products from entering the market.

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The relief that petitioners seek is not in the public interest. Grant of the waivers would be unjust to petitioners’ customers because it would render their televisions obsolete after the cessation of analog television broadcasting. It also would impede the digital transition. Given that petitioners do not satisfy the Commission’s waiver standard, the petitions should be denied.

Respectfully submitted,

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<sup>24</sup> See *Second Report and Order* at ¶ 25. See also *Sumitomo Order* at ¶ 6 (noting that “we remain mindful that the Commission’s purpose in adopting [the DTV tuner mandate] was to maximize the number of DTV receivers on the market, and that its goal was that all new television receiver products include a DTV tuner as quickly as possible”).